

1988

# Sharon Garland v. James Kent Garland : Brief of Respondent

Utah Court of Appeals

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Attorneys for Appellant: Craig M. Peterson; E. Paul Wood; Littlefield and Peterson.

Attorney for Respondent: Thomas R. Blonquist.

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## Recommended Citation

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IN THE UTAH COURT OF APPEALS

Defendant/Respondent.

Case No. 880344-CA  
Category 14(b)

**COURT OF APPEALS**

SHARON GARLAND,  
Plaintiff/Appellant,  
-vs-  
JAMES KENT GARLAND,  
Defendant/Respondent.

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)

BRIEF OF RESPONDENT  
  
Case No. 880344-CA  
Category 14(b)

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## CASES CITED

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| <u>Fletcher v. Fletcher</u> , 615 P.2d 1218 (Utah 1980) . . . . .                | 7 |
| <u>Jespersion v. Jespersen</u> , 610 P.2d 326 (Utah 1980) . . . . .              | 8 |
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| <u>Straut v. Straut</u> , 84 Ut Adv. Rep. 7 (filed 6/10/88) . . . . .            | 6 |

## STATUTES CITED

|   |   |
|---|---|
| Utah Code Ann. Section 15-1-14 (1986) . . . . .           | 6 |
| Utah Code Ann. Section 30-1-10.6 (1988) . . . . .         | 4 |
| Rule 52(a) of the Utah Rules of Civil Procedure . . . . . | 2 |

IN THE UTAH COURT OF APPEALS

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|                       |   |                     |
|-----------------------|---|---------------------|
| SHARON GARLAND,       | ) |                     |
|                       | ) |                     |
| Plaintiff/Appellant,  | ) | BRIEF OF RESPONDENT |
|                       | ) |                     |
| -vs-                  | ) |                     |
|                       | ) |                     |
| JAMES KENT GARLAND,   | ) | Case No. 880344-CA  |
|                       | ) | Category 14(b)      |
|                       | ) |                     |
| Defendant/Respondent. | ) |                     |

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JURISDICTION AND NATURE OF CASE

Respondent agrees with the jurisdictional allegations and description of the nature of the case as set forth in Appellant's Brief.

ISSUES PRESENTED ON APPEAL

The issues presented for review are:

1. Whether or not the Trial Court awarded Appellant a \$212,000 judgment against Respondent?
2. Whether or not the Trial Court abused its discretion by not awarding Appellant her attorneys' fees and costs.

SUMMARY OF RESPONDENT'S ARGUMENTS

1. Because Appellant did not want the responsibility to maintain the parties' real property, the Trial Court awarded said properties to the Respondent and gave the Appellant a cash equivalent. Realizing that the Respondent would be required to maintain, manage and sell the

properties, the Trial Court allowed Respondent to pay Appellant \$212,000 over an eleven (11) year period and ruled that no interest would accrue until payments became delinquent. Respondent contends that this ruling constituted an order to pay that can be reduced to a judgment only in the event an installment becomes delinquent and then only in the amount of the delinquency installment.

2. The Trial Court awarded Appellant \$8,637.62 cash, \$1,000 per month alimony, \$1,000 per month child support and \$212,000 payable over eleven (11) years and, therefore, did not abuse its discretion by not awarding Appellant her attorneys' fees.

#### LEGAL ARGUMENT

A. To determine whether the Trial Court made certain findings, the Court of Appeals can consider the ruling of the Trial Court and the findings together.(1)

In order to ascertain whether the Trial Court awarded Appellant a \$212,000 judgment or ordered Respondent to pay that sum over an eleven (11) year period, reference must be made to the bench ruling of the Trial Court. (See Exhibit "A" attached hereto at pages 8 and 9.) The ruling was:

---

(1) See Sprague v. Boyles Bros. Drilling Co., 293 P.2d 689 (Utah 1956); Rule 52(a) of the Utah Rules of Civil Procedure.

"Now, if I have done my arithmetic right, and when you get these added up, you know, if I have done some arithmetic wrong, we will fix it. If I have done my arithmetic right, I figure he got in the separation \$212,000, he'd have to give her to make this equal. And that's what I am going to require him to give to her and in this way: I am going to require that he pay to her \$12,000 in cash by July 1st, and then by December 31st he pay to her \$20,000 in cash, and continue to pay that for the next ten years until that is fully paid."

"MR. PETERSON: \$10,000?"

"THE COURT: \$20,000. \$20,000 a year for ten years. And that will not accrue interest. And the reason I am not adding interest onto that is because he is stuck with some very economic assets, unfortunately, and he is going to have to try to market the various pieces of real property and all those kind of things that she didn't want the responsibility for, and so I am not going to require him to pay any interest on that unless those payments become delinquent. If they do become delinquent, then he is going to have to pay them interest at the judgment rate they are past due."

From this ruling, counsel for Appellant prepared Conclusion of Law number 15 (Record p.189) and paragraph 14 of the Decree (Record p.194) to grant Appellant a \$212,000 judgment against the Respondent. This was erroneous and paragraph 14 of the Decree was corrected by Stipulation and Order, see Exhibit "B" attached hereto.

The Trial Court ordered the Respondent to pay Appellant \$12,000 on or before July 1, 1988, \$20,000 on or before December 31, 1988 and \$20,000 each year thereafter until Ap-

pellant received \$212,000. This order parallels an order to pay child support and alimony. It is prospective in nature and is only converted to a judgment in the event and in the amount of a delinquency. If Respondent fails to pay Appellant the \$12,000 by July 1, 1988, she is entitled to bring an order to show cause and obtain a \$12,000 judgment, bearing interest as provided by statute, against the Respondent; if the payment is timely made, no judgment would issue as to that payment.

Applicable and analogous to this issue is the recently enacted statute entitled "Payment under child support order - Judgement" found at Utah Code Ann. Section 30-3-10.6 (1988) which reads:

(1) Each payment or installment of child or spousal support under any child support order, as defined by Subsection 62A-11-401 (3), is, on and after the date it is due:

(a) a judgment with the same attributes and effect of any judgment of a district court, except as provided in Subsection (2);

(b) entitled, as a judgment, to full faith and credit in this and in any other jurisdiction; and

(c) not subject to retroactive modification by this or any other jurisdiction, except as provided in Subsection (2).

The Trial Court clearly stated in its ruling that it was attempting to equally balance the cash to be paid to the Appellant and the property to be received by the Respondent.



To award the Appellant a \$212,000 judgment would have disturbed the equality of the award. The Supreme Court of Idaho looked at this issue in State v. McNichols, 115 P.2d 104 (Idaho 1941), and ruled that to determine whether the action of the Trial Court was an "order" or a "judgment" we look to the content of the ruling not its title.

In analysing the content of the Trial Court's ruling, it is important to note that during the trial Appellant requested that she be awarded cash, not property, to be paid within some reasonable manner, (see Exhibit "C" page 173, lines 14 through 20.) To have the order to pay \$212,000 lodge as a judgment is totally inconsistent with this ruling and creates a serious imbalance in the property distribution for the following reasons:

1. In addition to paying child support and alimony of \$24,000 per year, Respondent would have to pay Appellant \$25,440 per year interest on the judgment.

2. All of the Respondent's property would be encumbered by the \$212,000 judgment preventing him from selling any parcel without first paying the judgment.

3. The Appellant could foreclose on her judgment thereby requiring the Respondent to sell his property in forced sales giving Appellant cash and stripping Respondent of all his property.

The Trial Court's ruling clearly shows that the Trial Court did not intend to foist these problems upon the Respondent. To do so would bring about an unjust result.

Respondent's position on this point is consistent with the rulings in Stroud v. Stroud, 738 P.2d 649 (Utah Ct. App.1987) and Stroud v. Stroud, 84 Utah Adv. Rep. 7 (filed June 10, 1988). In that case the Trial Court, pursuant to an order to show cause, entered a judgment against the defendant for approximately \$18,000 in unpaid child support and, thereafter, the defendant filed to stay execution and accrual of interest on the judgment so long as he made payments towards the judgment and met current child support obligations. The Trial Court ruled that it did not have the power or the authority to prevent the accrual of interest on the unpaid amount. The Supreme Court agreed and in so doing said first, that Utah Code Ann. Section 15-1-4 (1986) clearly states that any judgment will bear interest at the rate of twelve percent (12%) per annum and second, that to allow a reduction as the defendant suggests would thwart the intention of the statute by rewarding those who withhold or are delinquent in child support payments. (In the instant case, if a payment becomes delinquent, Appellant is entitled to a judgment bearing interest at twelve percent (12%) on the unpaid amount. This will in no way thwart the intention

of the statue by rewarding Respondent's delinquency.)

On this point, the Trial Court's reasoning was sound, leading to an equitable ruling and the Findings and Decree herein should be corrected to be consistent with the ruling of the Trial Court. Kerr v. Kerr, 610 P.2d 1380 (Utah 1980) and Fletcher v. Fletcher, 615 P.2d 1218 (Utah 1980).

B. The Trial Court did not abuse its discretion by not awarding the Appellant attorneys' fees.

Appellant's contention that the Trial Court abused its discretion and misapplied the law by not awarding her attorneys' fees is without merit. The Trial Court distributed assets in the manner suggested by Appellant (see Exhibit "C" attached hereby at pages 162 through 187 and page 173 at lines 18, 19 and 20), which gave Appellant cash both immediately upon entry of the Decree, see paragraph 7 of the Decree, R.193, and over an eleven (11) year period, see paragraph 14 of the Decree, R.194.

In this instance also, the Trial Court used sound reasoning as it ruled, after making the cash award to the Appellant, as follows:

"I think in this case, I am not going to award attorneys fees on the basis that he is going to have a very difficult time making these payment as is. There is a lot of money, and the assets are now delinquent and I don't think I am going to award attorneys fees in this case. It don't find it is going to be any easier for him to pay them than for her, therefore no attorneys fees are going to

be awarded." (Exhibit "A" at page 9, lines 13 through 20.)

The law is clear that in these matters, the Trial Court has wide discretion and its Findings will not be disturbed unless the record indicates an abuse thereof. Jespersion v. Jespersen, 610 P.2d 326 (Utah 1980).

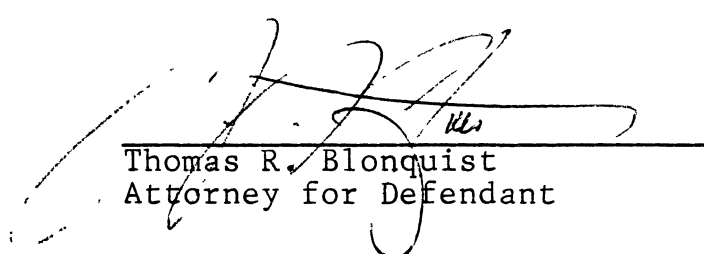
No such abuse exists here.

#### CONCLUSION

The record on appeal clearly supports the Trial Court's unambiguous rulings requiring Respondent to pay Appellant money over an eleven (11) year period and not requiring him to pay Appellant's attorneys' fees. This Court should correct the Findings of Fact and the Decree of Divorce to make them consistent with the Trial Court's bench ruling, leave the Decree undisturbed regarding attorneys' fees and award Respondent his attorney's fees related to this appeal.

Respectfully submitted.

Dated 27th day of January, 1989.



Thomas R. Blonquist  
Attorney for Defendant

I hereby certify that I caused to be delivered two copies of the foregoing Respondent's Brief to E. Paul Wood, attorney for Appellant, 426 South 500 East, Salt Lake City, Utah this 27th day of January, 1989.

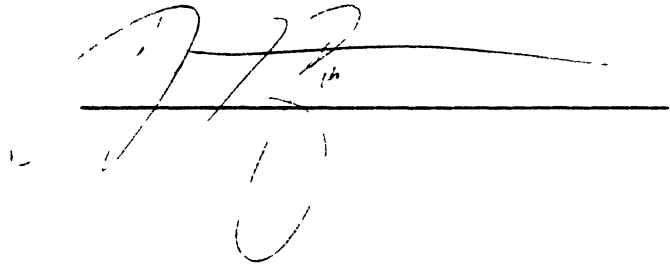
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EXHIBIT "A"

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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-oo0oo-

**FILMED**

SHARON GARLAND, )  
Plaintiff, )  
vs. )  
JAMES KENT GARLAND, )  
Defendant. )

Civil No. D87-772

**ORIGINAL**

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

February 17 & 18, 1987

BEFORE THE HONORABLE SCOTT DANIELS  
District Court Judge

A P P E A R A N C E S:

For the Plaintiff: CRAIG M. PETERSON  
LITTLEFIELD & PETERSON  
426 South 500 East  
Salt Lake City, Utah 84102

For the Defendants: DAVID S. DOLOWITZ  
of and for  
COHNE, RAPPAPORT & SEGAL  
525 East 100 South, Suite 500  
Salt Lake City, Utah 84102

**RECEIVED**  
MAR 16 1988

H. Dean Huddy, Clerk, District Court  
By Kate Cochran  
Deputy Clerk

1       valued at \$3,500; the coin collection valued at \$12,051.

2               MR. DOLOWITZ: I believe that is \$1200, your  
3       Honor.

4               THE COURT: Excuse me. \$1,251 is what I meant.  
5       And the gold and silver, I am going to rule does in fact  
6       exist, and he is awarded it in the amount of \$5,000.  
7       He is also awarded and charged for the amount that was in  
8       the Tracy-Collins account at the time of the separation,  
9       \$5,722.80. She is awarded charged for the amount in the  
10      two Valley Accounts \$215.

11              Let's see. As to the debt that supposedly is  
12      owing from the marriage to the dental laboratory, I don't  
13      -- that won't be included in the calculation. If that in  
14      fact is a debt, he will be responsible for it, but I am not  
15      going to add that to his liabilities.

16              Now, if I have done my arithmetic right, and  
17      when you get these added up, you know, if I have done some  
18      arithmetic wrong, we will fix it. If I have done my  
19      arithmetic right, I figure he got in the separation  
20      \$212,000, he'd have to give her to make this equal. And  
21      that's what I am going to require him to give to her and in  
22      this way: I am going to require that he pay to her \$12,000  
23      in cash by July 1st, and then by December 31st he pay to  
24      her \$20,000 in cash, and continue to pay that for the next  
25      ten years until that is fully paid.



1 MR. PETERSON: \$10,000?

2 THE COURT: \$20,000. \$20,000 a year for ten  
3 years. And that will not accrue interest. And the reason  
4 I am not adding interest onto that is because he is stuck  
5 with some very economic assets, unfortunately, and he is  
6 going to have to try to market the various pieces of real  
7 property and all those kind of things that she didn't  
8 want the responsibility for, and so I am not going to require  
9 him to pay any interest on that unless those payments  
10 become delinquent. If they do become delinquent, then he  
11 is going to have to pay them interest at the judgment  
12 rate they are past due.

13 I think in this case, I am not going to award  
14 attorneys fees on the basis that he is going to have a  
15 very difficult time making these payments as is. There is  
16 a lot of money, and the assets are now delinquent and I  
17 don't think I am going to award attorneys fees in this case.  
18 I don't find it is going to be any easier for him to pay  
19 them than for her, therefore no attorneys fees are going  
20 to be awarded.

21 I think I have covered all the issues. Is there  
22 anything else that needs to be brought before the Court?

23 MR. PETERSON: Nothing I am aware of, your Honor.

24 THE COURT: If you will prepare the document and  
25 submit it to Mr. Dolowitz for approval as to form.


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C E R T I F I C A T E

STATE OF UTAH                    )  
                                      : ss.  
COUNTY OF SALT LAKE        )

I, NORA S. WORTHEN, a Certified Shorthand  
Reporter, Registered Professional Reporter and Notary  
Public in and for the County of Salt Lake, State of Utah,  
do hereby certify that I reported stenographically the  
hearing which was held on February 17 and 18, 1988, and  
that the above and foregoing is a true and correct  
transcript of said proceedings at that time.

Dated this 4th day of March, 1988.

  
\_\_\_\_\_  
NORA S. WORTHEN, CSR, RPR, CP  
License No. 205

My commission expires:  
December 27, 1988

EXHIBIT "B"

FILED

CLERK OF DISTRICT COURT

JUN 21 1988

*[Signature]*  
Clerk

DAVID S. DOLOWITZ (0899)  
of and for  
COHNE, RAPPAPORT & SEGAL  
Attorneys for Defendant  
525 East 100 South, Suite 500  
P.O. Box 11008  
Salt Lake City, Utah 84147-0008  
Telephone: (801) 532-2666

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

\* \* \* \* \*

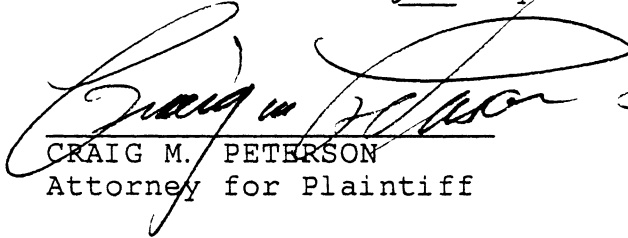
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|---------------------|---|---------------------|
| SHARON GARLAND,     | ) |                     |
|                     | ) | STIPULATION         |
| Plaintiff,          | ) |                     |
|                     | ) |                     |
| v.                  | ) |                     |
|                     | ) |                     |
| JAMES KENT GARLAND, | ) | Civil No. D87-772   |
|                     | ) | Judge Scott Daniels |
| Defendant.          | ) |                     |

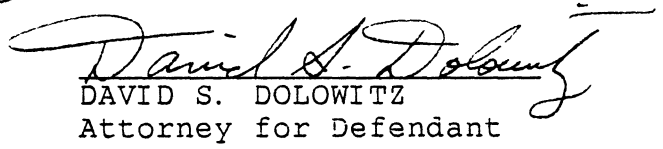
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The parties in the above-entitled matter hereby stipulate and agree that this court should, pursuant to the provisions of Rule 60(a) of the Utah Rules of Civil Procedure, amend paragraph 14 of the Decree of Divorce heretofore made and entered in this matter on or about the 3rd day of ~~March~~ <sup>MAY</sup>, 1988, so that the last sentence of that paragraph shall provide:

In the event any payment shall become delinquent interest shall accrue on that payment at the normal interest rate allowed by law.

DATED this 21<sup>st</sup> day of May, 1988.

  
CRAIG M. PETERSON  
Attorney for Plaintiff

  
DAVID S. DOLOWITZ  
Attorney for Defendant

DAVID S. DOLOWITZ (0899)  
of and for  
COHNE, RAPPAPORT & SEGAL  
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Salt Lake City, Utah 84147-0008  
Telephone: (801) 532-2666

1013-1338  
H.D. Scott Daniels Court  
County Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

\* \* \* \* \*

|                     |   |                     |
|---------------------|---|---------------------|
| SHARON GARLAND,     | ) |                     |
|                     | ) | ORDER               |
| Plaintiff,          | ) |                     |
|                     | ) |                     |
| v.                  | ) |                     |
|                     | ) |                     |
| JAMES KENT GARLAND, | ) | Civil No. D87-772   |
|                     | ) | Judge Scott Daniels |
| Defendant.          | ) |                     |

\* \* \* \* \*

The parties have presented to this court a stipulation that a clerical error was made in the last sentence of paragraph 14 of the Decree of Divorce entered in this matter on the 3rd day of ~~March~~ <sup>MAY</sup>, 1988, which should be corrected and, this court now finds and concludes that the Stipulation of the parties should be accepted and the clerical error made in paragraph 14 of the Decree corrected.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the last sentence of paragraph 14 of the Decree of

Divorce heretofore entered in this matter is amended to  
provide as follows:

In the event any payment shall become  
delinquent interest shall accrue on that  
obligation at the normal interest rate  
allowed by law.

DATED this 21 day of <sup>June</sup>~~May~~, 1988.

Scott Daniels  
SCOTT DANIELS  
District Court Judge

APPROVED AS TO FORM  
AND CONTENT:

Craig M. Peterson  
CRAIG M. PETERSON  
Attorney for Plaintiff

David S. Dolowitz  
DAVID S. DOLOWITZ  
Attorney for Defendant

ATTEST  
H. DIXON HINDLEY  
Clerk

Deputy Clerk

EXHIBIT "C"



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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

\* \* \*

|                     |   |                   |
|---------------------|---|-------------------|
| SHARON GARLAND,     | ] |                   |
|                     | ] |                   |
| Plaintiff,          | ] | Civil No. C87-772 |
|                     | ] |                   |
| vs.                 | ] |                   |
|                     | ] |                   |
| JAMES KENT GARLAND, | ] |                   |
|                     | ] |                   |
| Defendant.          | ] |                   |

ORIGINAL COPY

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

February 17, 1988

BEFORE THE HONORABLE  
District Court Judge Scott Daniels

A P P E A R A N C E S:

|                    |   |
|--------------------|---|
| For the Plaintiff: | Craig M. Peterson<br>LITTLEFIELD & PETERSON<br>426 South 500 East<br>Salt Lake City, Utah 84102                         |
| For the Defendant: | David S. Dolowitz of and for<br>COHNE, RAPPAPORT & SEGAL<br>525 East 100 South, Suite 500<br>Salt Lake City, Utah 84102 |

REPORTED BY: NORA S. WORTHEN, CSR, RPR, CP  
(801) 535-5344

1 Exhibit P-49, the first item on there is a home in South  
2 Jordan. Is it your desire that the Defendant should be  
3 awarded that property?

4 A Yes.

5 Q Why?

6 A Because he has taken care of it all these years,  
7 and he would be best suited for that, and it has got a lot  
8 of work that needs to be done on it, and I won't be able to  
9 do that.

10 Q Can you afford to meet the mortgage payments on  
11 that property?

12 A No. There is no way.

13 Q The item is High Country Estates. That's the  
14 vacant land; is that correct?

15 A Yes.

16 Q Why was that property purchased?

17 A He was wanting to build solar homes on that, and  
18 so that's why it faces the south, and he was hoping to  
19 build more underground homes there.

20 Q Is it your desire the Defendant be awarded that  
21 property?

22 A Yes.

23 Q Can you make the mortgage payments on that  
24 property if it is awarded to you?

25 A No.

1           Q     The property at 534 Windsor Street, that's  
2 generally regarded as the Trolley duplex; is it not?

3           A     Yes. Right.

4           Q     It is your desire the Defendant be awarded that  
5 property; is that correct?

6           A     Yes.

7           Q     And why is that?

8           A     Because he has dealt with it all from day one.  
9 And there is always things that need to be done on it, and  
10 I wouldn't be able to make the payments if--you know, if  
11 one of the renters left. And that's why.

12          Q     Is the home in need of some repair?

13          A     Yes.

14          Q     Would you be able to perform those repairs?

15          A     No.

16          Q     Have you had any dealings at all with these--  
17 either of the rental property, the South Jordan and Trolley  
18 duplex?

19          A     No.

20          Q     Do you believe you have the ability to deal with  
21 those satisfactorily?

22          A     No.

23          Q     Do you believe that if it is necessary to sell  
24 those, that Jim would have the better ability to sell them?

25          A     Yes.

1           Q     The home furnishings you have already provided an  
2 exhibit to the Court which sets out your distribution you  
3 would like; is that correct?

4           A     Yes.

5           Q     And these figures come from that exhibit; is that  
6 correct?

7           A     Yes.

8           Q     All of your vehicles as we have expressed before  
9 are owned by the corporations. Is it your desire that the  
10 two Suzuki motorcycles be awarded to the Defendant?

11          A     Yes.

12          Q     And why is that?

13          A     Because I don't ride them. He bought them, and  
14 he has use for them. I don't.

15          Q     The Coleman folding trailer, is it your desire  
16 that be awarded to the Defendant?

17          A     Yes.

18          Q     Why?

19          A     Because I would never use it. I don't go  
20 camping. He does, and he could use it.

21          Q     The quadrunner, is it your desire that also be  
22 awarded to him?

23          A     Yes.

24          Q     Why is that?

25          A     Because he bought it for himself. That's what he

1 wants. He would use it.

2 Q The next item is Garland Dental Lab. Is it your  
3 desire that also be awarded to the Defendant?

4 A Yes. I think he should have it. I would take  
5 it, but he needs that for his income, so I guess he should  
6 have it.

7 Q Are you willing in fact if the Court decides to  
8 take that asset, are you willing to take that in this  
9 divorce?

10 A Yes.

11 Q Do you think that you know how to run it?

12 A Yes.

13 Q Do you have the ability to run it?

14 A Yes.

15 Q Would it provide income for you if the Court were  
16 to award it to you?

17 A Yes.

18 Q Do you believe you could generate income in the  
19 same manner of the same type the Defendant has in the past?

20 A Yes.

21 Q You don't believe that it would be expedient to  
22 order that awarded to you?

23 A No.

24 Q Sun Earth Corporation, which is essentially the  
25 home on Seven Springs, is it your desire the Defendant be

1       awarded that?

2           A       Yes.

3           Q       And why is that?

4           A       Because that's been his dream, and he should--it  
5       is a venture that he has set out to do, and I think he  
6       should finish it.

7           Q       That actually, as we have discussed, is your  
8       home, but it is held by the corporate entity; is that  
9       correct?

10          A       Yes.

11          Q       Has the Defendant throughout these proceedings  
12       asked for that home?

13          A       Yes.

14          Q       And is it your desire he be awarded the home as  
15       he has asked?

16          A       Yes.

17          Q       Have you always anticipated moving from that home  
18       at the conclusion of these proceedings?

19          A       Or until school is out.

20          Q       That was actually my next question.

21          A       Yes.

22          Q       Is it your desire the Court allow you to remain  
23       in that home until school is concluded this year?

24          A       Yes.

25          Q       And at that time you are willing to transfer it

1 to the Defendant's possession?

2 A Yes.

3 Q Do you know, does the home--has the home been  
4 able to take advantage of significant tax writeoffs while  
5 it is being constructed?

6 A Yes.

7 Q Do you know if the home were taken out of Sun  
8 Earth and awarded to you, would that result in significant  
9 tax consequences to the corporation?

10 A Yes.

11 Q But you believe that is an important  
12 consideration in making a determination to award the home  
13 to him?

14 A Yes.

15 Q The last item on this page is the Hillside  
16 Partnership; you have valued that at \$15,000--

17 A Yes.

18 Q And it is your desire the Defendant be awarded  
19 that; is that correct?

20 A Yes.

21 Q Why is that?

22 A Because he is involved with partners, and that  
23 would be a sticky situation. His business is there. And  
24 it just wouldn't work out.

25 Q What wouldn't work out? You dealing with his

1 other partners?

2 A Yes, and me dealing with him because his business  
3 is there.

4 Q That's where it is physically located?

5 A Business is in the building.

6 Q The Merrill Lynch CMA money fund is on the first  
7 page. On the next page you show that as an asset held by  
8 Garland Dental Lab; is that correct?

9 A Yes.

10 Q The Stuart James account, that's a stock account  
11 presently available for distribution. Is it your desire  
12 you be awarded that account?

13 A Yes.

14 Q You are willing to make the trades there as  
15 necessary and assume any losses or gains in that account?

16 A Yes.

17 Q The next item is Blinder-Robinson & Company,  
18 presently hold \$4,400 in the account, according to your  
19 husband's testimony; is that correct?

20 A Yes.

21 Q Is it your desire that if that in fact is in  
22 existence, it be awarded to you?

23 A Yes.

24 Q And if not, that it be awarded to him and  
25 assessed against him; is that correct?



1           A     Yes.

2           Q     You placed that in his column pending a  
3     determination as to whether it actually exists at that  
4     balance; is that correct?

5           THE COURT:  You don't have any independent  
6     knowledge of whether it exists or what it is worth?

7           THE WITNESS:  No.

8           Q     (By Mr. Peterson)  The J T & C insurance stock,  
9     that is his father's company; is that correct?

10          A     Yes.

11          Q     That certainly should be awarded to him?

12          A     Yes.

13          Q     And you are not interested in more than face  
14     value on that; is that correct?

15          A     Right.  Yes.

16          Q     The loose diamond, how much did you pay for the  
17     loose diamond?

18          A     Thirty-five hundred.

19          Q     Is it your desire that it be awarded to you at  
20     its purchase value?

21          A     Yes.

22          Q     Has the diamond ever been appraised at a higher  
23     value than that?

24          A     Yes.

25          Q     Do you believe that it is actually worth any more

1     than that?

2             A     No.

3             Q     The coin collection, you have asked the Court to  
4     award that to the Defendant.   Why?

5             A     Because I don't know anything about the coin  
6     collection, and--I mean, I don't know--it is his and he is  
7     interested in the coin collection, so he can have it.

8             Q     The gold which you have testified existed  
9     previously, is it your desire that you be awarded that  
10    gold?

11            A     Yes.

12            Q     The Tracy Collins checking account, that's the  
13    money which was in the account at the time you separated;  
14    is that correct?

15            A     Yes.

16            Q     Is it your desire and belief that the Defendant  
17    should be assessed the value of that account at the time of  
18    your separation?

19            A     Yes.

20            Q     The Valley Bank checking and savings account,  
21    those are your present balances; is that correct?

22            A     Yes.

23            Q     And the Templeton World Fund, you are willing  
24    they should be divided between you equally as they are held  
25    in each of your own names?

1           A     Yes.

2           Q     Moving to the next page, which is the  
3 liabilities, regardless of what the liabilities are, is it  
4 your position that the Defendant should assume all of the  
5 outstanding liabilities on the real property?

6           A     Yes.

7           Q     Why is that?

8           A     Because I wouldn't be able to afford to make  
9 payment on them.

10          Q     That, then, would go hand in hand with your  
11 desire that he be awarded that property; is that correct?

12          A     Yes.

13          Q     Kent Garland is his father?

14          A     Yes.

15          Q     You believe it is appropriate, I assume, that he  
16 pay off his father?

17          A     Yes.

18          Q     And you have taken a large note here, Phyllis  
19 Heward, you are willing to assume that note?

20          A     Yeah.

21          Q     And why are you willing to assume that note?

22          A     So I can make sure it gets paid. She is worried  
23 to death that she won't get it, so I need to make sure she  
24 gets it.

25          Q     Is that your mother?

1           A     Yes.

2           Q     Do you believe that if the Court distributed  
3 these assets as you have prayed, that you should have  
4 sufficient funds to pay her off?

5           A     Yes.

6           Q     As to the expense you previously testified to, do  
7 you believe that the Defendant should assume the debt  
8 outstanding to Dr. Landau?

9           A     Yes.

10          Q     And he should assume his own Tracy Collins  
11 Mastercard?

12          A     Yes.

13          Q     You are willing to assume both the Nordstrom and  
14 Valley Bank Visa cards, which are yours in your own name;  
15 is that correct?

16          A     Yes.

17                THE COURT: That Valley Bank Visa card, you said  
18 that was open at the time while you were married?

19                THE WITNESS: Yes, it was.

20                THE COURT: What was the balance when you  
21 separated?

22                THE WITNESS: Probably zero. I didn't use it for  
23 a long time.

24                THE COURT: So this has been accumulated since  
25 the separation?

1 THE WITNESS: Yes. It had just barely been  
2 opened not even a year ago.

3 Q (By Mr. Peterson) And the last, the Nordstroms  
4 and Republic Bank, is it your desire that any deficiency  
5 existing there, that the Defendant be directed to pay  
6 those?

7 A Yes.

8 Q Those were debts that were incurred prior to your  
9 separation; is that correct?

10 A Yes.

11 Q Then the last page is a division of the assets as  
12 you proposed to the Court; is that correct?

13 A Yes.

14 Q Is it your desire that the Court accept your  
15 value, that he direct the Defendant to pay you the cash  
16 funds necessary to equalize your estate?

17 A Yes.

18 Q Is it your desire that he be directed to pay that  
19 within some reasonable time in some reasonable manner?

20 A Yes.

21 (Proceedings had at this  
22 point have been  
23 previously transcribed  
at the request of  
counsel.)

24 ///

25 ///

1 CROSS-EXAMINATION

2 BY MR. DOLOWITZ:

3 Q Mrs. Garland, do you have available to you your  
4 Exhibit 43, your Plaintiff's Monthly Expenses? I can ask  
5 the questions, Your Honor. I will give her an amount.

6 Mrs. Garland, you say rent or mortgage payment.  
7 You don't have presently a rent or mortgage payment?

8 A Right.

9 Q And you haven't had a rent or mortgage payment  
10 during the pendency of this action?

11 A Right.

12 Q You also put in taxes and insurance. You have  
13 not had taxes or insurance payments during the pendency of  
14 this action; is that correct?

15 A I have had insurance.

16 Q You have paid the real property tax and insurance  
17 on your home?

18 A I have paid insurance.

19 Q You paid the insurance on the home owned by Sun  
20 Earth Corporation?

21 A Uh-huh (affirmative).

22 Q That was \$100 a month?

23 A It has been \$67 a month for just insurance.

24 Q What type of insurance is it that you purchased  
25 and paid?

1           A     Full coverage on a home. It is what we purchased  
2 when we first moved in. It is the typical homeowners.  
3           Q     And that is something you have paid each month,  
4 the 67?  
5           A     Yes.  
6           Q     Have you paid any maintenance?  
7           A     Yes.  
8           Q     You have paid maintenance?  
9           A     Yes, I have.  
10          Q     \$80 a month worth?  
11          A     Yes, or sometimes more.  
12          Q     Now, since you have made those payments, you made  
13 those payments by check?  
14          A     And those checks would show up as part of the  
15 checks that you produced to us when we asked you to make  
16 those checks available for examination?  
17          A     Uh-huh (affirmative).  
18          Q     You also indicated food and household expenses of  
19 \$437 a month?  
20          A     Uh-huh (affirmative).  
21          Q     And that is also in checks that you made--you  
22 paid for that by checks, which you made available for us  
23 when we inspected your checks?  
24          A     Uh-huh (affirmative).  
25          Q     Now, you have indicated clothing of \$150.

1           A     Yes.

2           Q     Is that for you and for the children?

3           A     Yes.

4           Q     And that will also appear as part of the checks  
5 that you have produced for us?

6           A     Uh-huh (affirmative).

7           THE COURT: I know it is hard to remember, but  
8 you have really got to remember to say yes or no.

9           THE WITNESS: Oh, yes.

10          Q     (By Mr. Dolowitz) When you say entertainment,  
11 will that also appear in the checks, the \$400 a month?

12          A     Yes. There is a lot of times--sometimes I pay  
13 cash, I mean, but then sometimes I will write a check for  
14 cash, and then I will use cash when we do something.

15          Q     You indicated that you think you will have a \$350  
16 a month auto payment, and that's because you chose a  
17 \$13,000 automobile?

18          A     Yes.

19          Q     Did you look for a less expensive automobile?

20          A     No.

21          Q     You didn't think a less expensive automobile was  
22 more appropriate?

23          A     No. We have always had a brand new car. We have  
24 never had to buy a used one, and I thought that was very  
25 reasonable.



1           Q     I am a little confused by your testimony on  
2 installment payments. You say that you planned on getting  
3 credit cards?

4           A     I have credit cards.

5           Q     And you always pay those current at the end of  
6 each month?

7           A     I have.

8           Q     Then, there wouldn't be any installment payments,  
9 would there?

10          A     If I paid them off.

11          Q     Shouldn't they be included, if you are buying  
12 clothes in the clothes where you have charged those, or  
13 medical or dental, whenever you paid somebody off, that  
14 wouldn't be an installment payment, would it?

15          A     I don't know.

16          Q     You propose in the division of property to turn  
17 over a house for you and your husband owned by your  
18 husband, why don't you move into the house?

19          A     Are you talking return to the South Jordan home?

20          Q     The South Jordan home, if that's the home that  
21 you own.

22          A     Because it has--it would need too much work. It  
23 is like--the house is like a slum house now from having the  
24 renters there. It is pretty bad.

25          Q     You don't want that house awarded to you, then,

1     so you can turn around and sell it?

2             A     No.

3             Q     Wouldn't it be appropriate if you feel you are in  
4     need of money, for example, for a car, that you take that  
5     house and put it up for sale and sell it?

6             A     I need a car now. That would take longer than  
7     now. It would take--I don't know how long it would take,  
8     and my mom wants her car.

9             Q     Aren't you proposing to sell it to your husband  
10    and make him cash you out right now?

11            A     We didn't say right now.

12            Q     You said you need a car right now.

13            A     Yeah.

14            Q     So you need cash right now?

15            A     Yeah.

16            Q     But you are not willing to take the South Jordan  
17    home and put it up for sale?

18            A     No.

19            Q     What is the condition of the duplex?

20            A     It is pretty bad. It needs work.

21            Q     You are not willing to live there in either side?

22            A     No.

23            Q     You just don't think it is appropriate for you?

24            A     No, not with my kids.

25            Q     How many rooms are there in the duplexes?

1           A     There is--okay. He has made some in the attic.  
2     He has made some rooms. I have never been up there, and  
3     they are like studio--it is like a studio apartment in each  
4     side, so there is really no bedrooms there.

5           Q     Are you willing to take that and sell it?

6           A     No.

7           Q     Now, if I examine Exhibit 49, your proposed  
8     marital division, you are proposing that both the house and  
9     the duplexes go to your husband and you be paid for them.  
10    So in fact you are selling them to him, aren't you?

11          A     You could look at it that way.

12          Q     Aren't you willing to take them for the value you  
13    think they should be sold to him?

14          A     I don't want to have the responsibility of having  
15    to fix them up and worry about making the payments, and not  
16    knowing when I was going to be able to sell them.

17          Q     Then the values perhaps should be set lower and  
18    you want to sell them to him?

19          A     No.

20          Q     You are not willing to take them for this value?

21          A     I guess; I could.

22          Q     And then you would have control over what  
23    happened to them, wouldn't you?

24          A     If I--if I--yeah, I would.

25          Q     You would also have control over any income they

1 produced or could be produced by selling them?

2 A I wouldn't have very much control over anything  
3 if I had them. They would be in control of me.

4 Q The High Country Estate land, is there anything  
5 that stopped that land from simply being put up for sale?

6 A I don't know. Jim wants them, so I think he  
7 should have them. He wants the Sun Earth to continue. I  
8 think he should have that so he can build more homes there.

9 Q Are you willing to take them at the price you are  
10 proposing to sell them to him?

11 A No.

12 Q So if they were awarded to him, maybe the price  
13 should be lower?

14 A No.

15 Q You are not willing to take them at that price?

16 A I believe he should have them. I really think he  
17 would like that property.

18 Q Those are three properties that you could take,  
19 put up for sale, liquidate and turn into cash by yourself,  
20 couldn't you?

21 A No.

22 Q You can't turn them into cash? You can't put  
23 them up for sale?

24 A It would be really--it would--I haven't ever done  
25 anything like that before. I would have to go in and do a

1 lot of--do stuff that I have never done before, and Jim is  
2 accustomed to handling that, and I think he would be better  
3 off dealing with it.

4 Q Do you think he is entitled to any compensation  
5 if he has to do that?

6 A No.

7 Q He should just simply do it?

8 A If he wants to sell them. He doesn't have to  
9 sell them. He can keep them and keep the income like what  
10 he has been doing.

11 Q In fact you are selling them to him?

12 MR. PETERSON: Your Honor, he has asked that  
13 question now the fourth time.

14 THE COURT: Sustained.

15 Q (By Mr. Dolowitz) Do you have Exhibit 45, the  
16 furnishings which you are proposing to divide?

17 You could in fact sell them to--be willing to  
18 sell them to him if the Court accepts this proposal?

19 This I have to go over and over item by item.

20 THE COURT: Do you have any other copies,  
21 Mr. Peterson?

22 MR. PETERSON: Yes.

23 Q (By Mr. Dolowitz) As I understand Exhibit 45-P,  
24 Mrs. Garland, it is your proposal that you value these  
25 items and you will take some and you will give some to your

1 husband?

2 A Yeah.

3 Q You have proposed for example, the fourth item  
4 down, four coolers. You say those are worth \$50. Are you  
5 willing to let your husband take those for \$50?

6 A It doesn't really matter.

7 Q Then he could have them?

8 A If he wants.

9 Q And they could be valued at that?

10 You have proposed in here a table saw. Doesn't  
11 that table saw in fact belong to Sun Earth?

12 A No.

13 Q Isn't that in fact one of the tools that is  
14 included in the inventory on Sun Earth Corporation when Mr.  
15 Dorton said that there are depreciated present value of  
16 tools and equipment owned by Sun Earth?

17 A He might say there is tools. So far as I know,  
18 it is not Sun Earth's.

19 Q And if your husband were to indicate that is on  
20 the inventory of Sun Earth, you would not be in a position  
21 to disagree, would you?

22 A No, I wouldn't.

23 Q You have offered some water skis to your husband  
24 at \$30. Don't those in fact belong to your husband's  
25 sister?

1           A     Water skis?

2           Q     Water skis.

3           A     I don't know.

4           Q     And if they do in fact belong to your husband's  
5 sister, you are giving them to him at \$30 when they belong  
6 to her?

7           A     If they are his sister's, then I don't have any  
8 right to give them to anybody. But I assumed it was his--  
9 they were his.

10          Q     There are two 12-speed bikes that you have valued  
11 at \$500 given to you. Is there any reason why you did not  
12 give one to each of you--one to you and one to your  
13 husband?

14          A     Because one of them is mine and one of them can  
15 go to him.

16                THE COURT: About halfway down the list.

17                THE WITNESS: Okay. Well, they are worth \$500  
18 each or maybe \$500 together. One of them is for him and  
19 one for me.

20          Q     (By Mr. Dolowitz) Has there been an omission--  
21 should there be an indication that one goes to him?

22          A     Yeah, because he has got his already.

23          Q     The next three items below that are two stepping  
24 stools, a drill press, tools--aren't those the property of  
25 Sun Earth Corporation?

1           A     Not that I know of.

2           Q     Aren't they carried as part of the tools that  
3 were purchased by Sun Earth for building of the home and  
4 included in the inventory by Mr. Dorton where he has said  
5 there are tools and equipment purchased by Sun Earth for  
6 construction purposes?

7           A     I wasn't aware of that.

8           Q     Isn't that also true of the Craftsman folding  
9 table and heavy-duty extension cords?

10          A     No.

11          Q     As well as the two large gas tanks, a small gas  
12 tank?

13          A     No. The large--let's see. The large gas tank,  
14 it is possible. No. No. They were recreational gas  
15 tanks.

16          Q     You don't know if those were purchased by Sun  
17 Earth or not?

18               MR. PETERSON: She has answered no.

19               MR. DOLOWITZ: No. You don't know?

20               THE WITNESS: I don't believe they are Sun  
21 Earth's.

22          Q     (By Mr. Dolowitz) And if they were carried on  
23 the inventory of Sun Earth, then that would indicate they  
24 were purchased by Sun Earth?

25          A     I suppose.



1           Q     If you would turn to page 2 about the tenth item  
2 down is a hanging chair that you valued at \$150. Do you  
3 want that at \$150?

4           A     No.

5           Q     Have I advised you that at \$150, your husband  
6 doesn't want it either? Would you want it?

7           A     Yes.

8           Q     At any value at all?

9           A     At \$150.

10          Q     You will take it at \$150?

11          A     But he is the one that bought it and he is the  
12 one that wanted it, so I think he should have it and we  
13 just bought it a year ago.

14          Q     If I told you that he said you should have it at  
15 \$150, would you accept it?

16          A     Well, I would rather him have it because he  
17 wanted it. That's--I don't really care for it. So--

18               THE COURT: Was \$150 the original purchase price?

19               THE WITNESS: Yes.

20               THE COURT: That was one year ago?

21               THE WITNESS: Yes. And he has a place where he  
22 wants to hang it in the house, so he might as well use it.

23          Q     (By Mr. Dolowitz) Four rifle cases and scope.  
24 Those are the ones that is in response to your having  
25 shopped around to get that value?

1           A     Yes.

2           Q     Didn't Jim own those before the marriage?

3           A     He had one gun and I don't know exactly which one  
4     it was.

5           Q     In fact, didn't he own all four rifles before he  
6     was married?

7           A     Yes. I know he bought guns after our marriage,  
8     but I don't know exactly which ones.

9           Q     You also listed a stuffed duck. Are you willing  
10    to take the stuffed duck at 150?

11          A     That's his duck that he shot and he had stuffed.  
12    He is the one. I think he should have it. He has a  
13    collection of his animals. He wants it.

14          Q     If I told you that at 150 he is willing that you  
15    can have the stuffed duck, do you want a \$150 stuffed duck?

16          A     What is the value?

17          Q     My question is do you want a \$150 stuffed duck if  
18    he doesn't at \$150?

19          A     No.

20          Q     But if the price goes down, you might be  
21    interested?

22          A     I don't want the duck.

23          Q     At \$150, that duck may have trouble finding a  
24    home.

25                THE COURT: What, is this like a trophy? Is it a

1 duck that you take into a--  
2 THE WITNESS: Taxidermist.  
3 THE COURT: --and have it mounted?  
4 THE WITNESS: Yes. And I just thought that  
5 that's what it looked like it would be worth.  
6 THE COURT: Does it have a plaque that hangs on  
7 the wall?  
8 THE WITNESS: It is really nice looking. I  
9 mean--  
10 THE COURT: But at \$150, it is not nice enough?  
11 THE WITNESS: I didn't call for that. I looked  
12 at it and thought that it looked like \$150.  
13 Q (By Mr. Dolowitz) Did Jim have the stuffed pig  
14 before you were married?  
15 A Yes.  
16 Q So when you valued that at \$250, give it back to  
17 him? It has kind of appreciated a bit during the marriage.  
18 There is a horse sculpture for \$100. Didn't Jim  
19 make that while he was in school?  
20 A While we were married.  
21 Q I see. At \$100, would you like that sculpture?  
22 A Yes, I would. It is real nice.  
23 Q Jim is talented?  
24 A Yes.  
25 THE COURT: We will take a ten-minute recess